IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Bail Appl..No. 6625 of 2007()

CRIME NO.108/2007 OF KUNNICODE POLICE STATION

: PETITIONER/ACCUSED

B.SHAMNAD, SHA NIVAS,
KUNNICODE, VILAKKUDY VILLAGE,
PATHANAPURAM.

BY ADV. SMT.VIVEEJA RAVEENDRAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KUNNICODE POLICE STATION,
KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6625 of 2007

Dated this the 15th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Copy Rights Act. The learned counsel for the petitioner submits that the petitioner does have the requisite permission from the holder of the copy right and that proceedings are being initiated unnecessarily against the petitioner.

2. The learned counsel for the petitioner, in these circumstances, prays that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor submits that the investigation is now complete. Final report has already been filed. The investigating officer does not want to arrest or detain the petitioner. The petitioner need appear before the learned Magistrate and seek regular bail. The State has no objection against the grant of regular bail also. In these circumstances, there is absolutely no necessity for the petitioners to claim anticipatory bail. The petitioners may be directed to appear before the learned Magistrate and seek regular bail.

4. In the facts and circumstances of this case, I do not find any necessity to issue directions under Section 438 Cr.P.C. Of course, after the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself. I do take note of the submission of the learned Public Prosecutor that the State has no objection against grant of regular bail to the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007